

**Division of Development Administration and Review**

City of Pittsburgh, Department of City Planning

200 Ross Street, Third Floor

Pittsburgh, Pennsylvania 15219

ZONING BOARD OF ADJUSTMENT

Date of Hearing: May 4, 2023 (Virtual Hearing)
Date of Decision: June 2, 2023

Zone Case: 26 of 2023
Address: 3046 Phelan Way
Lot and Block: 25-M-240
Zoning Districts: R2-H
Ward: 6
Neighborhood: Polish Hill

Owner: Michael and Amelia Bernick
Applicant: Ryan England
Request: Addition of a third unit to an existing two-unit dwelling

Application: DCP-ZDR-2023-01007

Variance	Section 911.02	Three-unit dwellings are not permitted in R2 Districts
	Section 914.02.A	One parking space per unit required; no parking proposed for new unit

Appearances:

Applicant: Ryan England

Opposed: Michael Duray, John Rhodes

Findings of Fact:

1. The Subject Property is located at 3047 Phelan Way in an R2-H (Residential Two-Unit High Density) District in Polish Hill.
2. The grade of the Subject Property has an upward slope from the front property line on Phelan Way towards the rear of the property on Brereton Street.
3. The dimensions of the parcel are approximately 20' by 120' (2,400 sf).
4. The four-story structure on the Subject Property has been used for two residential units for a significant period of time. The lot size per unit with the two units on the property is 1,200 per unit.

5. Although permitted in the R2-H District, the City has not issued a Certificate of Occupancy for the use of the structure for two units.

6. The Applicant proposes to renovate the structure and, as part of the renovations, to create a third dwelling unit.

7. No off-street parking is located on the Subject Property and the Applicant does not propose to provide parking for the additional dwelling unit.

8. The Applicant asserted that it would not be financially feasible to use the structure for fewer than three dwelling units because of the extensive renovations required to bring the structure into compliance with the building code.

9. The Applicant submitted copies of the 1923 Sanborn Fire Insurance Map, which depicts two structures on the Subject Property; the 1942 Sanborn Map, which identifies the structure as an “apartment;” and the 1967 zoning map, which indicates that the zoning district designation for the area had been R3 (Residential Three-Family). Based on this documentation, the Applicant suggested that the structure might have been previously used for three units.

10. The Applicant identified other three- and four-unit residential structures in the proximate area of the Subject Property. Several of the identified structures are located in a LNC (Local Neighborhood Commercial) District, not the R2-H District.

11. The Applicant also asserted that the topography of the parcel is a unique characteristic that precludes the provision of off-street parking on the Subject Property.

12. Although the Applicant noted the topography of the site and asserted that it was a unique feature, the Applicant did not offer sufficient credible evidence that the site’s topography prevents development its use in a manner that would comply with the Code’s current use provisions. The Applicant also did not present any evidence that the variances requested were the minimum that would afford relief.

13. Michael Duray, the owner of the property at 3036 Brereton Street, appeared at the hearing to oppose the request and to express concerns about the impact of additional density on the availability of parking in the neighborhood.

14. John Rhodes, representing the Polish Hill Civic Association, appeared at the hearing and submitted a letter in opposition to the request.

Conclusions of Law:

1. Pursuant to Code Section 911.02, three-unit residential uses are not permitted in R2 Districts.

2. Pursuant to Section 903.03.D, the minimum lot size per unit in High Density Residential Districts is 1,800 sf per unit.

3. Section 914.02.A would require one parking space for the additional dwelling unit proposed.

4. Section 922.09.E sets forth the general standards the Board is to consider with respect to variances. The criteria for determining whether to grant a variance include: 1) whether unique circumstances or conditions of a property would result in an unnecessary hardship; 2) whether the property could be developed in accordance with the Code's requirements to allow for its reasonable use; 3) whether the applicant created the hardship; 4) 3 whether the requested variance would adversely affect the essential character of the neighborhood or the public welfare; and 5) whether the variance requested is the minimum variance that would afford relief with the least modification possible. See *Marshall v. City of Philadelphia and Zoning Bd. of Adj.*, 97 A.3d 323, 329 (Pa. 2014); *Hertzberg v. Zoning Board of Adj. of the City of Pittsburgh*, 721 A.2d 43 (Pa. 1998), citing *Allegheny West Civic Council v. Zoning Bd. of Adj. of the City of Pittsburgh*, 689 A.2d 225 (Pa. 1997); see also *Metal Green Inc. v. City of Philadelphia*, 266 A.3d 495, 510 (Pa. 2021).

5. To support a request for a use variance, the applicant must provide some evidence of a hardship that prevents the development of the property in conformance with the Code's requirements and that the variance requested is the minimum that would afford relief. *Hertzberg*, 721 A.2d at 47-48.

6. The Applicant failed to present any evidence of any unique condition of the Subject Property or any hardship that would justify the grant of a use variance.

7. The Applicant also failed to offer sufficient credible evidence as to why the proposed use for three units would be the minimum variance that would afford relief.

8. Consistent with the objectors' concerns regarding the density proposed for the site, the 1,200 sf lot size per unit for the existing two units does not conform to the Code's density requirement and the addition of third unit would further reduce the lot size per unit to 800 sf per unit.

9. Because the Board concludes that the proposed use is not permitted, it is not necessary to specifically address the parking variance associated with the request for the proposed three-unit structure. However, to the extent required, that variance request, which would waive the parking requirement, is also denied.

10. For these reasons, consistent with the evidence presented and the applicable legal standards governing variances, the Board concludes that denial of the application is appropriate.

Decision: The Applicant's request for variances from Sections 911.02 and 914.02 to allow use the Subject Property for three dwelling units is hereby DENIED.

s/Alice B. Mitinger
Alice B. Mitinger, Chair

s/Lashawn Burton-Faulk
LaShawn Burton-Faulk

s/ John J. Richardson
John J. Richardson

Note: Decision issued with electronic signatures, with the Board members' review and approval.